

<h1 style="text-align: center;">FARMINGTON POLICE DEPARTMENT</h1> <h2 style="text-align: center;">POLICY AND PROCEDURE</h2>		
	<b>POLICY NUMBER:</b> <b>101-04</b>	<b>EFFECTIVE DATE:</b> <b>2/28/2013</b>
	<b>SUBJECT:</b> <b>Response to Aggression (Formerly Use of Force)</b>	
	<b>APPROVED BY:</b>  <b>KYLE WESTALL, CHIEF OF POLICE</b>	
		

### **PURPOSE:**

To provide police officers with guidelines on the use of lethal and non-lethal force.

### **POLICY:**

It is the policy of the Farmington Police Department, in compliance with the Fourth Amendment of the United States Constitution, that our police officers shall use only that force which is reasonably necessary to maintain control of an incident, to effect lawful objectives, or while protecting the lives of themselves or another.

### **PROCEDURE:**

The United States Supreme Court, in a case entitled Graham v. Connor, set forth the analytical model by which all use of force cases are reviewed. As required by Graham, an officer's use of force is assessed by examining the facts and circumstances known to the officer, including a review of the following:

1. The severity of the suspect's crimes;
2. The immediacy of the threat posed by the suspect to the safety of the officer or others; and
3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight.

As used by Graham, objective reasonableness is much like the related concepts of reasonable suspicion and probable cause. Objective reasonableness requires more than an officer's *subjective* belief about a suspect and the level of threat that the suspect poses. Indeed, an officer can not base a decision to use force on a hunch, a feeling, or some other unquantifiable belief. It is an *objective* test which means that the officer's good faith beliefs for taking certain action are irrelevant.

Instead, an officer must be able to identify specific and articulable facts which led to the officer's conclusion and subsequent decisions to act. Essentially, an officer must list the information that he or she observed, heard, or otherwise collected through reliable police channels along with the source of that information. Sometimes just as important, an officer must identify unknowns and why this lack of information is important to an assessment of the suspect's threat level. An officer may identify information collected which may only be apparent to a trained police officer.

Based on those specific and articulable facts, an officer can then use his or her training and experience to interpret the known information and reach a reasonable conclusion as to the level of threat posed by the suspect. Stated another way, the conclusion an officer draws about a suspect must be based on the known facts apparent to the officer at the time.

This process does not deal with hard certainties, but with probabilities. The use of the 20/20 vision of hindsight to analyze an officer's use of force decision is prohibited. This is why the Graham test is called objective *reasonableness*, not objective *certainty*.

### **Definitions:**

**Lethal Force:** Any use of force that is likely to cause death or serious physical injury.

**Less-Lethal Force:** Measures or equipment such as bean-bag rounds or other propelled impact devices designed by the manufacturer to incapacitate without causing death or serious physical injury which are deployed from a traditional firearm. These measures, when deployed properly, still possess the potential to cause death or serious physical injury.

**Non-Lethal Force:** Any use of force other than that which is considered lethal or less-lethal force.

**Empty Hand Techniques:** A physical contact technique that includes many different methods of subject control. Empty Hand Techniques can be broken down into two categories: "Soft"- which are techniques that have minimal potential for injury and "Hard"- which are techniques that have a higher likelihood of injury to a suspect.

1. **"Soft" Empty Hand Techniques:** Techniques such as touching, escort holds, pressure point controls, etc., which are appropriate for use against subjects opposing lawful actions by Passive Resistance or by Defensive Resistance.
2. **"Hard Empty Hand Techniques:** Striking actions delivered to a subject's body by hand, fist, forearm, leg or foot. Preferably, the target areas for these techniques are major muscle structures, such as the thighs, legs, arms and torso. These techniques when applied to muscle structures often create muscle cramping, thus limiting the muscle action of the subject, which might allow an

officer to bring the subject under control. These techniques are appropriate for use in some instances against subjects opposing lawful actions by means of Defensive Resistance or Active Aggression by an Unarmed Assailant.

The described use of empty hand techniques does not preclude an officer from applying these same techniques to the head, neck, or groin area of a suspect under circumstances where such techniques are the result of the changing dynamics of the confrontation and such techniques are required to defend the officer from injury or death due to the evolving nature of the suspect's resistance.

**Serious Physical Injury:** A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement, or which results in long-term loss or impairment of the functioning of any major bodily member or organ.

**Reasonable Belief:** The facts or circumstances by which the officer knows, or should know, which would cause an ordinary and prudent officer to act or think in a similar way under similar circumstances.

### **Types of Resistance:**

1. **Psychological Intimidation:** Non-verbal cues (i.e. attitude, demeanor, mannerisms, and appearance- which may include clues taken from the subject's manner and style of dress, such as clothing items depicting knowledge of mixed martial arts combat training, or physical behaviors) indicating a subject's unwillingness to comply with lawful commands.
2. **Verbal Non-Compliance:** Verbal responses or threats indicating a subject's unwillingness to comply with lawful commands.
3. **Passive Resistance:** Non-cooperative or non-responsive behavior following lawful commands. Examples include a subject refusing to remove their hands from their pockets or refusing to put their hands behind their back when instructed to do so.
4. **Defensive Resistance:** Non-cooperative physical actions that attempt to prevent an officer's control. Examples include pulling away from an officer during handcuffing procedures, tightening of arm muscles to avoid being handcuffed, or running away from an officer after being told he or she is under arrest for an offense other than the running.
5. **Active Aggression by an Unarmed Assailant:** Physical actions of unarmed assault or battery on a police officer or another person.
6. **Active Aggression by an Armed Assailant:** Physical actions of armed assault or battery on a police officer or another person.

All sworn personnel are issued copies of this policy and instructed on its contents before being authorized to carry a firearm. At least once a year, as part of firearms qualification, officers receive updated training on this policy and its application.

### **Important Legal/Law Enforcement Definitions:**

1. **Behavior Cue:** Actions taken by a person coupled with outside information which is available to an officer, or which are observed during an incident, which indicates potential threat levels.
2. **Control:** To exercise restraint and/or directing influence over another. (To regulate, restrain, dominate, curb, to hold action, counter-react or to govern over.)
3. **De-Escalation of Force:** Using less force once it has been established that the suspect is compliant and/or the officer has gained a high degree of control over the suspect.
4. **Gross Criminal Negligence:** Gross criminal negligence may be construed as being criminal in nature where such negligence is accompanied by acts of commission and/or omission of a wanton and willful nature which show reckless or indifferent disregard of the rights of others, under circumstances reasonably calculated to produce injury, or which will make it probable that injury will occur.
5. **Excited Delirium:** A state of extreme mental and physiological excitement, often characterized by some or all of the following: exceptional agitation and hyperactivity, overheating, excessive tearing of the eyes, removal of clothing, hostility, exceptional strength, aggression, paranoia and/or endurance without apparent fatigue.
6. **Imminent Jeopardy or Imminent Danger:** In relation to self-defense, this term means an immediate danger which must be met, which cannot be guarded against by calling for the assistance of another, or through the protection of the law. Or, as otherwise defined, the immediate perception of a threatened or impending injury which would cause a reasonable and prudent person to instantly raise their defense against such jeopardy or danger.
7. **Imminent Death:** An immediate threat to the life or safety of an officer or another human being.
8. **Tactical Advantage:** Any means by which an officer may gain an advantage over an opposing suspect, or suspects, during a confrontation. This advantage can be by the positioning of one's body, concealment or cover options, or through weaponry options.

### Parameters for Use of Lethal Force:

After weighing the respective interests of law enforcement and the suspect, the United States Supreme Court, in a case entitled Tennessee v. Garner, held that the Fourth Amendment authorized a police officer's use of deadly force in the following circumstances:

"[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction

of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given."

The Supreme Court, in Garner, also *prohibited* the use of deadly force in the following circumstance:

"[t]he use of deadly force to prevent the escape of all felony suspects, whatever the circumstance, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead."

**Accordingly, police officers are authorized to use lethal force in order to:**

1. Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious physical injury;
2. To prevent the escape of or to stop a suspected felon who has committed a crime involving infliction of serious physical injury and who has the ability to carry out that action or threat.

Where feasible, some warning should be given prior to engaging in the use of lethal force. Officers are not precluded from using any available means necessary to deploy lethal force when justified. Officers should give appropriate medical assistance to injured suspects in circumstances where the officer's safety is no longer in jeopardy.

**Officers may also discharge a firearm under the following circumstances:**

1. To safely destroy an animal that represents a threat to public safety or as a humanitarian measure where the animal is seriously injured;
2. During qualifications, range practice, or sporting events.

In any surroundings there remains a heightened probability that a discharged projectile (bullet) could ricochet and/or return to the earth's surface (ground) and unintentionally strike an innocent or uninvolved citizen. Therefore, warning shots are prohibited, absent a justified emergency where doing so would save an officer, or another, from death or serious physical injury. Warning shots shall be fired in such a manner so as to not endanger innocent parties and with due regard for the officer's surroundings.

Officers should not discharge a firearm at or from a moving vehicle except as the ultimate measure of self defense or defense of

another.

Firearms will be carried in a safe and secure manner. Careless handling of firearms is prohibited.

### **Parameters for Use of Less-Lethal Force:**

Less-lethal force currently consists of the use of a beanbag round or any other type of projectile, designed by the manufacturer to incapacitate individuals without causing death or serious physical injury, and which is deployed by a traditional firearm.

Less-lethal force may be used in situations where the officer reasonably believes that the subject possesses the means to place citizens, officers, or themselves in situations of potential lethal hazard. It may be used even though the subject has not yet caused threats which constitute an imminent fear of death or serious bodily harm.

Less-lethal force is not designed as a substitute for lethal force but, rather as an alternative in some instances. Proper use of less-lethal force requires a sufficient amount of time for officers to confirm the circumstances of the incident and to verify the use of a less-lethal projectile. Therefore, officers are encouraged but, not compelled, to use less-lethal force rounds where feasible. Officers should be familiar with and follow the guidelines in the USE OF BEANBAG ROUNDS as described in [Appendix E](#).

### **Parameters for Use of Non-Lethal Force:**

In circumstances where lethal force is not authorized, officers should assess the incident in order to determine how to best de-escalate and bring the incident under control in a safe manner.

### **Assessment may include:**

1. Potential for officer or offender injury, (i.e. whether the suspect is armed or attempting to harm their self or another).  
Consideration should also be given to whether the suspect has made a verbal threat of physical violence to an officer or another and whether they have the ability to act on the threat;
2. Seriousness of the crime committed by the suspect(s);
3. Number of suspects involved and/or other subjects present who may become involved;
4. The size of the suspect or suspects relative to the officer;
5. The apparent combat related skill level of the suspect or suspects;

6. Number of bystanders and/or potential for secondary exposure of bystanders;
7. Whether the amount of force used will be sufficient to de-escalate the situation;
8. Whether the amount of force used is objectively reasonable under the circumstances;
9. The subject's apparent medical condition, mental state and/or the apparent influence of alcohol and/or drugs;
10. Weapons possessed and/or available to the suspect(s);
11. Whether evidence may or is likely to be destroyed;
12. Information, prior experience, or other reasonable, articulable facts possessed by the officer regarding the specific suspect(s) or location that would lead a reasonable officer to believe that lower levels of force may be unsafe or inadequate.

**Additional Officer Assessment Factors to be Considered:**

1. Size, physical ability and defensive tactics expertise of the individual officer;
2. The necessity of immediate defense in the case of a sudden attack;
3. Number of officers on scene and available;
4. Weapons and/or restraint devices available;
5. Legal requirements;
6. Department policies and procedures.

**Officers are authorized to use Department approved non-lethal force techniques and equipment to resolve incidents as follows:**

1. To protect themselves or others from physical injury;
2. To restrain or subdue a resistant individual;

3. To bring an unlawful situation safely and effectively under control;
4. To prevent damage to private or public property.

### **Training and Qualifications:**

#### **Lethal Weapons:**

Police officers shall carry only weapons and ammunition as authorized by the Department under [Policy #101-05, Firearms](#), and must demonstrate proficiency in their use prior to being approved to carry such weapons.

#### **Less-Lethal Weapons:**

Beanbag shotguns; are used to deploy beanbag rounds. Initial training and annual proficiency exams are required as described in [Appendix E](#).

#### **Non-Lethal Force Weapons and Methods:**

Officers are not permitted to use a non-lethal weapon unless qualified in its' proficient use as determined by training procedures. Approved non-lethal force weapons are:

1. Baton, Empty Hand and Unarmed Impact techniques;
  - a. Batons are currently issued to Department personnel. Initial training is conducted during basic police academy training and updated training is conducted periodically. Batons will be approved through training guidelines.
  - b. Empty hand and unarmed impact techniques are currently taught to officers during basic police academy training and updated training is conducted periodically. Techniques will be approved through training guidelines.
  - c. The Farmington Police Department does not currently teach nor authorize the use of Lateral Vascular Neck Restraint. This is also commonly referred to as the "Carotid Restraint," which consists of a control hold that compresses one or both of the carotid arteries and/or jugular veins without compressing the airway passage of the throat.
2. Oleoresin Capsicum (OC), and Orthocholoroldenzalmalononitrile (CS) type chemical products primarily known as pepper mace or tear gas. Initial training is required with periodic update training as described in [Appendix A](#).



3. Taser electro-muscular incapacitation device; this device is currently used by designated officers. Initial training and annual proficiency exams are required as described in [Appendix B](#).
4. Police service dogs are used by the Patrol Division; training is conducted on a weekly basis. Periodic outside evaluations are conducted as described in [Policy #241-06 Canines](#).
5. Tire Deflation Devices (TDD) are currently issued to patrol personnel. These devices are used to forcibly stop fleeing vehicles. Officers are given training on these devices when issued as described in [Appendix C](#).
6. Pepper Ball Launchers; are used to deploy OC powder and other substances, inside an encapsulated projectile, these devices are currently issued to designated officers. Initial training and annual proficiency exams are required as described in [Appendix D](#).

### **Reporting Response to Aggression:**

Any response to aggression must be reported according to [Policy #101-07 Incident Review Board](#). A supervisor is immediately notified of any incident involving the use of force meeting the following criteria:

1. When a firearm is discharged outside the firing range, except during legitimate sporting events;
2. When use of force results in death or injury;
3. When a citizen complains that an injury had been inflicted.

### **Department Response to Incidents Involving the Use of Lethal Force or In-Custody Death:**

The department shall conduct both a criminal and administrative investigation into all incidents involving the use of lethal force or in-custody death. The criminal investigation shall be conducted by the Detective Division or outside agency at the request of the Chief of Police or designee, while the administrative investigation shall be conducted by the Internal Affairs Division.

In accordance with contemporary scientific research, in depth interviewing of the officer or officers involved in an incident resulting in the infliction of death or serious great bodily harm should not occur prior to the completion of two regular sleep cycles, but not longer than 72 hours from incident's occurrence. The Chief of Police or his or her designee retains the right to determine that an operational necessity exists wherein the involved officer or officers may be subjected to interviewing specific to the operational necessity.

When a police officer's response to aggression or other actions cause death or serious injury, the officer is placed on administrative

leave, until it is determined by a mental health specialist and the Chief of Police or designee that the officer is ready to return to duty. The officer shall undergo subsequent evaluations if behavior or performance indicates it would be in the best interest of the officer and/or Department. In all cases where lethal force was utilized, a subsequent evaluation is performed on or near the anniversary date of the event. Additional follow up evaluations are on a case by case basis.

A documented review of the incident or occurrence shall be prepared for the Chief or designee. The review should indicate whether policy, training, equipment, or disciplinary issues should be addressed. The administrative investigation and a criminal investigation will be conducted independently of each other.

### **Lethal Force Incident Procedures, to Include Matters of Infliction of Great Bodily Harm or In-Custody Death:**

1. Determine officer safety and approach the injured suspect(s) and secure them, if safe to do so. If the situation remains unsafe for approach, hold position of safety and await the arrival of backup personnel;
2. Request the response of emergency medical personnel, as soon as it is practical and safe to do so;
3. Officers will immediately notify the dispatch center of the incident and request the response of a shift supervisor, as soon as it is practical and safe to do so;
4. Determine the physical condition of the injured suspect(s), rendering medical aid only if and when practical and safe to do so. The application of medical aid may potentially be delayed, if the officer has also sustained severe/life threatening injuries, until the arrival of other department/medical personnel. In all cases, the rendering of medical aid will be carried out as expeditiously as possible. Injured suspects shall be secured during medical transport unless this cannot be accomplished due to the nature of their injuries;
5. Secure the scene as well as can be established and available personnel permits. This may be initiated by the involved officer; however, they will be relieved of this duty upon arrival of backup personnel;
6. The involved officer will remain on scene, unless injured, until the arrival of the shift supervisor;
7. The involved officer will maintain their weapon in their possession and protect the weapon(s) from change or alteration, treating it or them as evidence, and will surrender the weapon(s) to a lead investigator or to Internal Affairs upon request. This should occur at the police station or other appropriate location, absent a justified investigative need. The officer shall be issued a replacement weapon prior to the conclusion of his/her shift, unless deemed otherwise by the Chief of Police or designee;
8. Shift Supervisor Responsibilities:

- a. Ensure proper notification of the chain of command. The shift supervisor will be responsible for notifying the appropriate Shift Lieutenant, as well as the Public Information Officer (PIO). The shift lieutenant and PIO will be responsible for continuing the notification process up their respective chains of command, to the Chief of Police;
- b. Ensure the scene and any evidence is protected and assign security assignments;
- c. Assign personnel to gather and identify any and all potential witnesses, in order to obtain initial identification and statements;
- d. Establish a command post;
- e. Instruct the involved officer(s) that they are not to wash their hands until permission to do so is given by a lead investigator; however, the investigator must take into consideration washing or decontamination in the event of the presence of blood borne pathogens or other contaminants;
- f. If uninjured, the supervisor shall place the involved officer(s) in a comfortable, secure location away from the center of attention or public view. This may be a medical center, police station (private room) or other location deemed appropriate. The supervisor shall also contact a companion officer (department member) of the involved officer's choosing. The companion officer will be instructed to remain with the involved officer and will ensure that all of their needs, where possible and appropriate, are met. Under no circumstance will the involved officer be left unattended due to the likelihood or potential that the officer may become mentally and/or physically overwhelmed due to the severe nature of the event. The companion officer will not ask any questions in regards to the incident itself. The companion officer is solely in place to attend to the needs and comfort of the involved officer. The companion officer may also be assigned to remain with the involved officer while off-duty or on administrative leave, if deemed necessary;
- g. During the immediate aftermath of the incident, the involved officer(s) will not be subjected to any questioning or discussion of the incident except as it is absolutely necessary to the on-scene investigation. The involved officer(s) will also be directed to not discuss the incident with anyone who is not officially assigned to the investigation, to include the companion officer;
- h. In order to ease the potential anxiety of the involved officer and the officer's family, the officer shall not be prohibited from notifying immediate family members of his or her status and safety following the incident. Additional arrangements will be made to contact the involved officer's family to advise them of the incident and the post incident procedures that will be followed. This should be followed through with expeditiously, so as to avoid family members being notified by media entities, or other outside sources, prior to Department contact. An open line of communication with the involved officer's family will be maintained throughout the investigation.
- i. If the officer is injured or hospitalized, arrangements shall be made to transport their spouse or other immediate family member to the hospital. If possible, this should be accomplished by a department member (other than the companion officer) who is a close friend of the involved officer.

**Required Medical Aid:**

Immediately after the response to aggression against a suspect, the officer shall be alert to any indications and/or complaints that the individual needs medical care. This includes, but is not limited to, breathing difficulties, gagging, and significant obvious increase in body temperature, profuse sweating, or loss of consciousness. Upon observing these or other medical problems, or if the suspect requests medical assistance, the officer shall immediately summon emergency medical aid.

Appropriate medical aid is rendered following any response to aggression that results in visible injuries or complaints of injury. Subjects with injuries are examined by emergency medical personnel on scene or are transported to the San Juan Regional Medical Center's Emergency Room for treatment prior to incarceration. When OC spray is used on a suspect, officers shall take reasonable steps to monitor the suspect for symptoms of any medical emergency related to the use of OC spray as outlined in [Appendix A](#).

**See the following Policy Attachments for additional Response to Aggression guidelines:**

[Response to Aggression/Appendix A Oleoresin Capsicum \(OC\)/Orthochloroldenzalmalononitrile \(CS\)](#)

[Response to Aggression/Appendix B Use of Taser](#)

[Response to Aggression/Appendix C Tire Deflation Device](#)

[Response to Aggression/Appendix D Pepper Ball Launcher](#)

[Response to Aggression/Appendix E Bean Bag Round](#)